



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2011

Mr. Nohl Patrick Bryant  
Law Offices of Louis T. Rosenberg, P.C.  
For the Bexar County Emergency Services District #6  
322 Martinez Street  
San Antonio, Texas 78205

OR2011-03968

Dear Mr. Bryant:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412117 (District File No. 08-05-H)

The Bexar County Emergency Services District #6 (the "district"), which you represent, received a request for specified investment reports, a specified agreement, specified documents pertaining to certification for fire departments, call logs for the fire departments for a specified time period, three specified contracts, specified claims documents, and three specified grant applications. You state the district has released most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

---

<sup>1</sup>We note that although you raise section 552.305 of the Government Code, this section is not an exception to disclosure under the Act; rather, it is a procedural provision permitting a governmental body to decline to release information that may implicate a person's privacy or property interests for the purpose of requesting a decision from this office as provided under the Act. See Gov't Code § 552.305; Open Records Decision No. 542 (1990). We also note that section 552.101 of the Government Code is the proper exception to raise when asserting information is confidential under another statute; accordingly, we understand you to raise section 552.101 of the Government Code based on the substance of your arguments.

Section 552.103 of the Government Code provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state that a lawsuit styled *Southside I.S.D. Board of Trustees, Ata-Bexar County Line Volunteer Fire Department, and Sandy Oaks Volunteer Fire Department v. The Board of Directors of the Bexar County Emergency Services District #6*, Cause No. 2010-CI-19119 has been filed against the district and is currently pending in the 225<sup>th</sup> Judicial District Court, Bexar County, Texas. Based on the submitted information, we understand this case was filed before the district received the present request. Accordingly, we agree litigation to which the district is a party was pending on the date the district received the present request. Further, we find the submitted information is related to the pending litigation. Thus, we conclude the district may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.

---

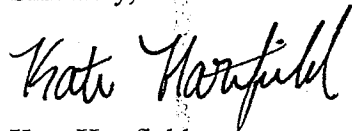
<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

*See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 412117

Enc. Submitted documents

c: Requestor  
(w/o enclosures)